

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

CHRISTINE OWEN, individually and derivatively  
as a shareholder of ROHM Services Corporation  
and RHH Mendon Properties, Inc., and as executor  
of the Estate of Barbara Hurlbut,

Plaintiff,

– against –

ROBERT W. HURLBUT and HURLBUT  
HEALTH CONSULTING, LLC,

Defendants.

Index No. E2022010777

Hon. Christopher S. Ciaccio

**AFFIDAVIT OF CHRISTINE A. OWEN**

**TABLE OF CONTENTS**

	<u>Page</u>
I. ROHM AND THE REAL ESTATE BUSINESSES IT MANAGED BECOME ESTATE PLANNING ASSETS .....	1
II. SCOPE OF MY RESPONSIBILITIES AT ROHM .....	4
A. <i>Real Estate and Property Management</i> .....	4
B. <i>Landscaping Design &amp; Maintenance</i> .....	5
C. <i>Exterior Appearance &amp; Maintenance</i> .....	6
D. <i>Interior Design &amp; Appearance</i> .....	6
E. <i>Dining Room Experience</i> .....	6
F. <i>Marketing</i> .....	7
G. <i>Employee Uniforms and Dress Code</i> .....	9
H. <i>Employee Reviews</i> .....	9
I. <i>Vendor Management and Budgeting</i> .....	9
III. OTHER MANAGEMENT SERVICES PROVIDED BY ROHM.....	10
A. <i>CFO Services</i> .....	10
B. <i>Accounts Payable</i> .....	10
C. <i>Accounts Receivable</i> .....	11
D. <i>Purchasing</i> .....	11
E. <i>Vendors and Suppliers</i> .....	12
F. <i>Quality Care Coordinator</i> .....	12
G. <i>Nurse &amp; Certified Nursing Aide (“CNA”) Policies and Training</i> .....	13
H. <i>Compliance and Governance</i> .....	13
I. <i>Marketing</i> .....	13
J. <i>Hiring Support</i> .....	14
K. <i>Employee Payroll &amp; Benefits</i> .....	14
L. <i>Corporate Office</i> .....	15
M. <i>IT Services</i> .....	15
N. <i>Courier Services</i> .....	15
IV. DIFFICULT RELATIONSHIP BETWEEN SIBLINGS .....	15
V. MY FATHER’S 2009 WILL .....	16
VI. ROHM AFTER MY FATHER’S DEATH.....	17
VII. BOB JR. ACQUIRES 100% OF THE NURSING HOMES, WHILE RETAINING 100% CONTROL OF ROHM .....	21
VIII. LITIGATION AND DISCOVERY OF MY BROTHER’S SELF-DEALING.....	22
IX. MY ACQUISITION OF 50% OF ROHM’S SHARES UNDER MY FATHER’S ESTATE PLAN.....	24

**CHRISTINE A. OWEN**, being duly sworn, deposes and says as follows:

1. I'm plaintiff in this action and pursue claims individually and in my capacities as a shareholder of ROHM Services Corporation ("ROHM"), and RHH Mendon Properties, Inc. ("RHH Mendon"), and executor of my mother's estate.

2. I have personal knowledge of the facts set forth below, except those matters set forth upon information and belief, and as to those matters, I believe them to be true for the reasons stated.

3. This Affidavit is submitted in support of my cross-motion for partial summary judgment.

4. This Affidavit is also submitted in opposition to Defendants' motion for summary judgment.

**I. ROHM AND THE REAL ESTATE BUSINESSES IT MANAGED BECOME ESTATE PLANNING ASSETS**

5. During his lifetime, my father Robert H. Hurlbut owned various limited liability companies which operated skilled nursing facilities (the "Nursing Homes" or the "NH Operating Entities"). He owned anywhere between thirteen and sixteen NH Operating Entities at any given time. He also owned multiple business entities (the "NH Real Estate Entities"), which controlled the real estate for each of the Nursing Homes and leased such real estate to the Nursing Homes.

6. My father also developed several other entirely separate business enterprises, including without limitation a management and bookkeeping enterprise in the 1970s called ROHM Services Corporation ("ROHM"), a residential and farmland real estate rental company in the 1980s called RHH Mendon Properties, Inc. ("RHH Mendon"), as well as other real estate holding companies.

7. Upon information and belief, my father formed ROHM as a multi-purpose management and bookkeeping entity. ROHM, which has been located at 740 East Avenue in Rochester, New York since roughly 1999, provided management and bookkeeping services for the NH Homes. ROHM also provided property management and bookkeeping services for the NH Real Estate Entities, and later provided similar services to various other entities in which my father held an interest, including RHH Mendon and multiple other real estate holding companies. In other words, ROHM was the flagship enterprise upon which virtually all the other entities owned by my father depended to operate their businesses.

8. Upon information and belief, my father worked with accountants and lawyers to structure agreements and transactions among entities he owned. I was not involved in his structuring of such transactions. It was only much later that I gained an understanding of such matters.

9. Upon information and belief, because he owned all the associated business entities, my father could choose where to recognize profits associated with his multiple enterprises. Based upon information I gained through litigation, when my father owned all the associated entities, he elected to recognize all the profits in his Nursing Homes and/or other affiliated entities (such as the entities owning and leasing real estate to the Nursing Homes). To achieve such outcome, upon information and belief, my father charged lower-than-market rates for ROHM's management services, causing ROHM to do no better than generating little or no profit.

10. As part of his estate plan, during his lifetime, my father sold his ownership interests in the NH Operating Entities to me and my brother Robert W. Hurlbut ("Bob Jr."). Each such transaction left my brother with a majority ownership interest in each Nursing Home and me with a minority ownership interest in each Nursing Home. At first, my father transferred his ownership

interests to my brother and me on a 70-30 basis. Later, my father transferred ownership interests in the Nursing Home operating companies to my brother and me on a 60-40 basis. I was a minority and passive owner in each NH Operating Entity. The operating agreements provided that “[t]he overall control of the business and affairs of the company shall be vested in Robert W. Hurlbut.”

11. Despite selling the NH Operating Entities, my father determined to preserve 100% ownership and control of ROHM, 100% interests in the NH Real Estate Entities, as well as other business interests, including his stake in RHH Mendon.

12. After transferring the NH Operating Entities to me and my brother, my father continued to serve and work as Chairman of the Board of Directors of ROHM.

13. My father had previously appointed my brother as the President and Treasurer of ROHM, and subsequently appointed me as ROHM’s Vice President and Secretary. He granted us both salaries for the work we performed for ROHM.

14. My father, as Chairman of the Board of Directors of ROHM—which managed my father’s real estate companies as well as the Nursing Homes in which he had divested—continued to largely control all of the businesses until his death. He worked closely with my brother and me to supervise our execution of our respective responsibilities.

15. Upon information and belief, as part of his estate plan to transfer his remaining wealth to his children, my father continued to operate ROHM as a breakeven enterprise. As a result, virtually all profits inured to our benefit. I did not realize or appreciate that he was doing this at the time but discovered it much later.

16. My father often expressed his interest in continuing the various business enterprises he had created as a family enterprise. He was exceptionally team oriented; he always spoke in terms of “we” and “our”, instead of “me”, “I”, and “mine.” For example, on several occasions, I

was present when employees voiced their gratitude to him, saying “I really enjoy working for you.” Each time, he looked the employee straight in the eye and corrected him or her, saying “*With*. You work *with* me, not *for* me.”

17. Bob Jr. had a very different attitude and character, and he and I did not always work well together. Nevertheless, my father was the glue that held us together, and he often expressed his desire for us to continue operating as a family team. I tried my best to work through issues that arose with my brother, for the sake of my family and especially my father.

## II. SCOPE OF MY RESPONSIBILITIES AT ROHM

18. By the time of my father’s death, Bob Jr. and I had developed a clear division of responsibilities at ROHM, with my father overseeing each of us. I do not recall when exactly I began working at ROHM, but I certainly worked for ROHM for at least twenty years before departing in 2016.

19. My father worked with my brother on broad scale business operations and finances typically in meetings I did not attend. I was not privy to their discussions and to this day do not know what they discussed. I know only that they were making decisions about overall finances concerning ROHM, the NH Operating Entities, and the NH Real Estate Entities.

20. I had numerous responsibilities for ROHM which kept me busy often for more than forty hours per week. I regularly attended separate meetings with my father to discuss the numerous projects on which I was working. I deferred in general to my father and brother to address all overarching business-related and financial decisions.

21. My responsibilities while working at ROHM included the following:

### A. Real Estate and Property Management

22. I managed all rental properties, consisting of approximately eight residential properties and two farmland properties (a combined 600 acres), owned by RHH Mendon, ensuring

maintenance of the interiors and exteriors of the residential properties, including all landscaping. I fielded calls regularly about any needed repairs. When leases turned over, I identified and oversaw updates to the residence prior to re-leasing it and hired vendors to complete necessary work. I had authority to lease the properties and worked closely with realtors to custom tailor relevant lease terms. I worked directly with farmers in negotiating farmland leases.

23. Hurlbut Real Estate, LLC owned one residential property for which I performed the same type of responsibilities as I did for the RHH Mendon.

24. Hurlbut-Waterloo Properties, LLC owned four residential properties for which I performed the same type of responsibilities as for the RHH Mendon real estate.

25. -Hurlbut Hornell Properties, LLC owned two residential real estate properties for which I performed the same responsibilities as for the RHH Mendon real estate.

26. Hurlbut-Boca Properties, LLC owned two residential properties in Boca Raton for which I performed the same type of responsibilities as for the RHH Mendon real estate.

27. Hurlbut Meriden Properties, LLC owned two residential properties for which I performed the same type of responsibilities as for the RHH Mendon real estate.

28. The Brightonian Inc. owned a residential property used for nurse training and record storage for which I performed the same type of responsibilities as for the RHH Mendon real estate.

*B. Landscaping Design & Maintenance*

29. As part of ROHM's management services to the Nursing Homes and NH Real Estate Entities, I was also responsible for approximately thirteen properties owned by various real estate holding companies, and leased to the Nursing Homes, as well as the property leased to ROHM. With respect to these properties, I negotiated and oversaw most of the lawn mowing and snowplowing contracts with vendors. I also ensured, with respect to all such properties managed

by ROHM, the maintenance of any and all trees and shrubs, seasonal flower planting, and other landscaping work, frequently meeting with ROHM's vendors to discuss plans for thinning trees, new plantings, curb appeal, and the like.

C. Exterior Appearance & Maintenance

30. My duties at ROHM included the appearance and maintenance of the building exteriors associated with ROHM and the Nursing Homes. I worked closely with many of ROHM's vendors as to exterior painting and building maintenance, including roofing, gutters, windows, and masonry. I conducted frequent inspections of various properties, reviewed issues with Nursing Home Administrators and vendors, and developed and implemented plans for completing the associated work or project.

D. Interior Design & Appearance

31. I was responsible for virtually every aspect of the interior designs and overall appearance of the interiors of the Nursing Homes and ROHM offices. For these purposes, I worked with closely with ROHM's go-to vendor to develop design/vision boards for the Nursing Homes. My responsibilities included resident rooms, dining rooms, physical therapy rooms, occupational therapy rooms, activity rooms, employee dining areas, reception areas, offices, nursing stations, bathrooms, storage areas, business offices, desk systems, and file storage systems. For interior spaces, I selected and managed plans as to vendor installation of flooring, light fixtures, chandeliers, draperies, beds, paint swatches, toilets, sinks, tubs, faucets, counters, mirrors, doors, door handles, carpeting, furniture, televisions, privacy curtains, handrails and safety rails, and decorative signs.

E. Dining Room Experience

32. I managed multiple aspects of resident dining experience at the Nursing Homes. I selected, and worked with ROHM's purchasing director to order, all dining items, including



without limitation serving trays, china plates, bowls, cups, coffee cups, saucers, glass dishes for desserts and side dishes, napkins, tablecloths, and flatware. I worked directly with the Nursing Home Administrators to assess needs at their facilities and with ROHM's suppliers to arrange fulfillment.

F. Marketing

33. I worked with my father to custom-brand each individual Nursing Home, including working with an advertising agency to custom-create logos for each NH Operating Entity. I supervised a vendor to place the logos on the website and arranged to have logos placed on buses used for resident field trips. I supervised custom tailoring of decorative signs placed at the street entrances for each facility, matching each logo to the personality for each home. My responsibilities also included developing plans for and ordering for each Nursing Home custom logo stationery and marketing brochures, as well as arranging for etching the various logos to each facility's glass entry doors.

34. Additionally, I worked with ROHM's website design vendor to develop an overarching website for the Nursing Homes using professional photographs. I reviewed and revised the website design, working closely with the vendor to ensure that the website met the needs of the Nursing Homes, both collectively and individually.

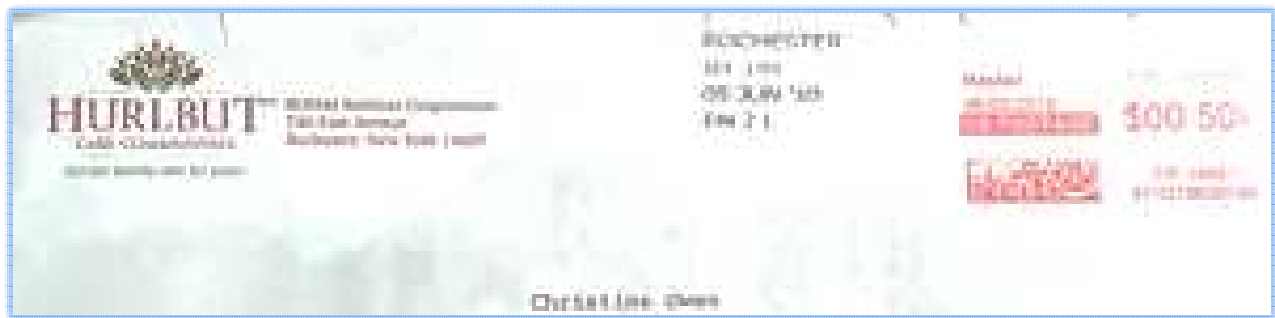
35. I also participated in the creation and placement of advertisements for the Nursing Homes in various publications in the Rochester area and nearby communities where some of the facilities were located (*i.e.*, in Waterloo, Hornell).

36. Eventually, ROHM's advertising agency convinced my father to shift marketing strategies to a single-brand strategy. Upon information and belief, in or around 2010, ROHM began using "Hurlbut Care Communities," with the slogan "Let our family care for yours" as the family-

owned brand overarching all the Nursing Homes. As part of this shift in branding, on behalf of ROHM, I worked with the advertising agency to develop the “Hurlbut Care Communities” logo:



As part of this re-branding effort, I worked with ROHM’s vendors to add the “Hurlbut Health Communities” logo to the signs located at the street entrance of each facility, as well as to the website and other advertisements on behalf of the Nursing Homes. Shortly after my father died, I worked with my brother and others at ROHM to help prepare a television advertisement under Hurlbut Care Communities. Within just a few years, Hurlbut Care Communities had become *the* brand for the Nursing Homes, which, upon information and belief, ceased altogether to use their own logos. Upon information and belief, the logo was added to Nursing Home paperwork, including stationary. Below are images of envelopes I received in June 2019 and April 2023 respectively, reflecting continued use of the Hurlbut Care Communities logo and slogan:





G. Employee Uniforms and Dress Code

37. I worked with other ROHM employees to select uniform options for the employees at the NH Operating Entities, including nurses, certified nursing assistants, front office personnel, dietary personnel, housekeeping, physical therapists, occupational therapists, and activities staff members. We rolled out the uniform program to the Nursing Homes, and based upon each employee’s selection, ROHM worked with its uniform vendor to order the associated uniforms. As part of this uniform program, I was responsible for helping develop a dress code ensuring presentability and professionalism of the Nursing Home staff.

H. Employee Reviews

38. Due to my high level of interaction and supervision of ROHM’s receptionist and director of purchasing, I assumed responsibility for their annual reviews.

I. Vendor Management and Budgeting

39. For each of my projects, I was responsible for working with the purchasing director to obtain quotes from vendors, and for presenting them to ROHM’s Chief Financial Officer (“CFO”) for review. I had no involvement in ROHM’s creation of a broader budget for each Nursing Homes or for ROHM itself. I was not expected to review, and did not review, details in the broader budget, but rather received from my father, brother, and the CFO specific project-based budgets within which to perform the various responsibilities described above. Having presented

quotes and projected project costs, the CFO would advise as to both expense limits and timetables for completion.

### III. OTHER MANAGEMENT SERVICES PROVIDED BY ROHM

40. Throughout my time at ROHM, the company had approximately 33 employees, and provided the following services to its customers:

#### A. CFO Services

41. For many years (until roughly 2012), ROHM's CFO was Dennis Mart; upon his retirement, Bridgett Reed replaced him. The Nursing Homes did not have their own CFOs, and ROHM therefore provided CFO services to the Nursing Homes. ROHM's CFO worked with the Nursing Home Administrators to develop annual budgets and hosted annual meetings with Bob Jr. and each Nursing Home Administrator. Although I did not participate in these meetings or have any involvement in them, upon information and belief, each Nursing Home Administrator would present a proposed budget for the upcoming year, and Bob Jr. and the CFO would revise and finalize it. In addition to overseeing annual budgets, ROHM provided the NH Operating Entities and NH Real Estate Entities with additional financial and accounting services, including working with outside accountants on behalf of each of them with respect to the preparation of financial statements, ensuring proper financial reporting, arranging for payment of taxes, etc. Although I knew ROHM was generally providing these services to its customers, I know very little about the details.

#### B. Accounts Payable

42. ROHM handled all accounts payable ("AP") for its numerous customers, including without limitation RHH Mendon, the NH Real Estate Entities, and the NH Operating Entities. At any given time, roughly nine employees at ROHM were dedicated to handling AP. Each employee was assigned approximately two or three of ROHM's customers and was responsible for payment

of all of the bills issued to those customers. ROHM possessed its customers' checkbooks and processed, organized, and arranged for payment of the bills. Though I was not personally involved in reviewing and processing such payables, I saw the work performed by the AP employees, as they processed the mountains of paperwork.

C. Accounts Receivable

43. ROHM handled all the accounts receivable ("AR") for the Nursing Homes. Roughly twelve employees at ROHM were dedicated to providing such services. Each employee was assigned approximately two or three ROHM customers and was required to keep all the accounts current. With respect to the NH Operating Entities, the responsible AR employee at ROHM was required to keep track of the accounts of each Nursing Home resident. The AR employees worked with Medicare, Medicaid, insurance carriers, etc., to ensure payment of all invoices. Their work also included sending out invoices and notices concerning overdue accounts and coordinating with Nursing Home Administrators and attorneys to arrange for collection of outstanding sums. I was not involved in any of the details associated with AR work but witnessed the employees processing voluminous documentation and their organizational and logistical skills in doing so.

D. Purchasing

44. ROHM provided all procurement for ROHM proper as well as the Nursing Homes. For many years, ROHM employed two or three individuals dedicated exclusively to procurement. Thereafter, the purchasing department operated with one employee. In 2015, ROHM hired a second procurement employee to assist the director of purchasing. In addition to purchases for which I was responsible (described above), ROHM handled procurement of nursing supplies, housekeeping equipment and supplies, food and dietary items, office supplies and equipment, employee uniforms, etc. ROHM developed contracts with preferred suppliers for purchasing of

all such items. To provide color, procurement performed by ROHM included (without limitation): vending machine vendor contracts; lab and x-ray vendor contracts; overhead announcement system contracts; contracts for replacement and service of copier and fax machines; contracts for replacement of resident bed linens, towels, washcloths; soap dispenser contracts; paper hand towel contracts; toilet paper and paper towel vendor contracts, etc.

*E. Vendors and Suppliers*

45. ROHM, through ROHM's Purchasing Director and CFO, managed almost all vendor and supplier relationships on behalf of ROHM's customers, and negotiated contracts with vendors and suppliers to obtain preferred rates. For example, and without limitation, ROHM managed the following types of vendors and suppliers: food service suppliers, garbage vendors, medical waste vendor, plumbing, HVAC, roofing, interior designers, gutters, landscaping, kitchen and bed linens, kitchen equipment, furnace vendor, heating vendor, vendors associated with numerous types of kitchenware and dining items, conveyor belt vendor, washing machines and dryers, printers, phone service, glass vendor, paving and re-striping for parking lots and private drives, exterior lighting vendors, locksmiths, WanderGuard suppliers, mobile X-ray providers, medical equipment vendors, pharmaceutical suppliers, pharmacy vendor services to process each resident's prescriptions, nurse call systems vendors, payroll vendor.

*F. Quality Care Coordinator*

46. ROHM employed a quality care coordinator for the Nursing Homes. The quality care coordinator handled customer service communications from residents and their families, developed nursing policies and procedures for the Nursing Homes, and generally managed and supervised the Directors of Nursing at each of the Nursing Homes. The quality care coordinator was involved with and approved all state survey nursing deficiency corrective measure responses from all facility annual surveys.

G. Nurse & Certified Nursing Aide (“CNA”) Policies and Training

47. Through its quality care coordinator, ROHM provided training, continuing education, and other classes for CNAs, licensed practical nurses (“LPNs”), and registered nurses (“RNs”), and any other nursing home staff.

H. Compliance and Governance

48. Upon information and belief, ROHM oversaw and supervised all Medicare and Medicaid reporting for the Nursing Homes. ROHM also provided support (through its quality care coordinator) for Department of Health inspections, and frequently supervised the Nursing Homes’ compliance with Department of Health regulations and reporting requirements. Other than as set forth in the next paragraph, I was not personally involved with such corporate compliance and governance, and therefore have very limited involvement or knowledge about the details associated with such issues.

49. I was personally involved in ensuring that all interior design selections complied with applicable state and federal laws and regulations.

I. Marketing

50. ROHM provided all marketing services for the NH Operating Entities. ROHM’s marketing director developed and implemented plans for marketing the Nursing Homes across the community. I worked with the marketing director on improvements and updates to the brochures and to the Nursing Home websites. ROHM’s marketing director arranged for the Nursing Home customers to have a presence at community events (e.g., Alzheimer’s Walk) and at trade organization events (Greater Rochester Area Partnership for the Elderly (“GRAPE”)). She also organized the Nursing Homes’ presence at trade shows, including booths at the trade shows to market the Nursing Homes to prospective employee applicants. She marketed Hurlbut Care

Communities to the public at large, as well as specifically to potential employees, and maintaining the Hurlbut Care Communities reputation and brand outwardly.

*J. Hiring Support*

51. ROHM, through its President, CFO, and quality care coordinator, handled the hiring of Nursing Home Administrators by the NH Operating Entities, and ROHM's quality care coordinator also provided assistance with respect to the hiring of the Director of Nursing at each Nursing Home. Upon information and belief, ROHM also assisted the NH Operating Entities with respect to the hiring of the Medical Director to oversee medical services being provided to residents. Additionally, the Nursing Homes had resident physicians responsible for managing medical care for residents. I cannot recall how the resident physician was hired or employed (e.g., by ROHM, by the Nursing Home, or by independent contract). Upon information and belief, however, ROHM helped negotiate contracts with such resident physicians, and worked with the Nursing Home Administrators with respect to recruiting and hiring resident physicians in cases of turnover. Upon information and belief, ROHM assisted the Nursing Homes with respect to contracting with area hospitals with respect to the resident physicians. I was not personally involved with ROHM's work with respect to hiring support, and therefore know little in terms of details. My knowledge arises from my interactions over many years with ROHM's employees who were engaged in such work.

*K. Employee Payroll & Benefits*

52. ROHM, through its business office manager, handled payroll and employee benefits for each of the Nursing Homes. ROHM employees handled all communications with the employees of the Nursing Homes about their 401K plans, vacation allotments, health insurance, and other benefits. ROHM, as part of its budgeting role, determined salary and hourly rate ranges for each category of employee at the Nursing Homes. ROHM worked with a payroll vendor to



ensure that all Nursing Home employees were properly accounted for and received their paychecks.

*L. Corporate Office*

53. Over my twenty years at ROHM, ROHM's office at 740 East Avenue in Rochester, New York (and prior to 1999, 11 South Goodman Street, Rochester, New York) served as the central corporate hub for all of the Nursing Home Administrators. They met at ROHM's offices monthly with my father, brother, the CFO, and any ROHM department heads who needed to share information with and/or give direction to the group. The Nursing Home Administrators also attended meetings at ROHM for group vendor presentations, such as the insurance vendor for the NH Operating Entities.

*M. IT Services*

54. ROHM provided IT services to each of the Nursing Homes. ROHM had approximately two employees dedicated to providing all IT support, such as ordering, installing, and maintaining all of the IT equipment and software, and fielding all "helpdesk" type inquiries.

*N. Courier Services*

55. ROHM provided courier services for the Rochester-area Nursing Homes, employing a full-time courier, who did post office runs every day with many mailings from ROHM on behalf of the Nursing Homes, and performed daily deliveries between the Nursing Homes and ROHM's corporate office.

**IV. DIFFICULT RELATIONSHIP BETWEEN SIBLINGS**

56. Throughout the time period leading up to my father's death, the relationship between me and my brother was hot and cold. Bob, Jr. sometimes acted as if he cared about me, and wanted to work with me. More often, he belittled me, undermined my relationship with others at ROHM and the Nursing Home Administrators, and strived to maintain dominance over me and

everything to do with ROHM. Whenever I asked questions about operations, he reacted in a hostile manner and told me to stay in my own area.

57. During this time, my brother insisted over and over again that *he* was the person who was responsible for ROHM's success. He even belittled my father, claiming that my father was lazy, ineffective, and cognitively impaired. Bob Jr. made such statements to me on multiple occasions.

58. In or around 2007, I considered leaving the family business to pursue a different opportunity. To assist me in determining the value of my interests in connection with anticipated negotiations with my brother, my father supplied me with many financial documents. Later, then-CFO Dennis Mart approached me and convey my brother's reaction to finding out that I had received financial information. According to Dennis, Bob Jr. instructed him and others at ROHM not to share anything with my father or me without asking him first.

#### V. MY FATHER'S 2009 WILL

59. On October 6, 2009, my father executed a Will disposing of his assets upon his death (Doc. 92). Article V of the Will created a Marital Trust for the benefit of his surviving spouse, my mother Barbara Hurlbut ("Barbara") (*id.*, art. V). My mother was the lifetime income beneficiary and a permissible principal beneficiary of the Marital Trust (*id.*, §§ V.D.1, V.D.2).

60. My father's Will directed that, upon my mother's death, the trustees should, after paying any required estate taxes, distribute the remaining principal in equal parts to me and my brother as residual beneficiaries of the Marital Trust (*id.* § V.D.4).

61. My father died in 2013 (Doc. 23). Under his Will, my father chose to transfer upon his death all his real estate holding interests, together with his 100% interest in the company which managed them (ROHM), to the Marital Trust for the benefit of his wife, my mother (*id.* ¶ 25).

62. In other words, upon information and belief, under my father's estate plan, the real estate holding and rental properties, together with their management company ROHM, were supposed to be operated for the benefit of the Marital Trust—*i.e.*, to generate income for my mother during her lifetime, and only to thereafter to be conveyed to me and my brother on a 50-50 basis.

63. My father's Will nominated Mary E. Ross and Jerald J. Rotenberg (the "Original Trustees") as trustees for the Marital Trust (*id.* § XX).

64. According to my brother, the Original Trustees delegated some of their authority to my brother, who served as the "president" of the Marital Trust (Doc. 23). In that role, my brother oversaw the finances and administration of the Marital Trust (*id.* ¶ 23).

65. My brother also served as President of ROHM, as well as President of the Nursing Homes of which he was majority owner.

66. After my father's death, Bob Jr. purchased from my father's estate 100% of the NH Real Estate Entities prior to the distribution of the estate assets into the Marital Trust.

67. At no time did Bob Jr. purchase ROHM.

## **VI. ROHM AFTER MY FATHER'S DEATH**

68. Between 2013 and 2016, I retained the titles of Vice President and Secretary of ROHM. I also retained my minority, passive interest in the Nursing Homes.

69. After my father died, I continued performing the same general duties on behalf of ROHM as I had before, even though the number of properties I managed fluctuated upward and downward over time. I continued to receive my salary exclusively from ROHM, and not from any other entity, during the more than twenty years I worked at ROHM.

70. I was never involved in any decisions about how ROHM was charging for its services (either before or after my father's death). I did not have access to the QuickBooks accounts or receive monthly operating statements for ROHM or any of its customers. Nor did I review rate

information or rate analyses, or review invoices between ROHM and its customers. The budgets I was responsible for were project specific. To the extent I saw annual operating budgets for ROHM, I focused exclusively on verifying any budget items that might pertain to my responsibilities. I did not have enough knowledge or information about the other aspects of the ROHM operating budget to offer comment.

71. Despite my titles, my brother made it crystal clear to me that he was in charge, that he was the only reason for ROHM's success, that I was totally incompetent, that I had contributed absolutely nothing to ROHM, and that I should stay out of his area. My brother made clear that I must defer to him entirely to make all decisions concerning how to operate ROHM's business and the Nursing Homes generally. He did not consult me about those topics, did not share with me his plans or decisions, and generally excluded me from discussions. I did not try to participate because the interactions became ugly every time I stepped out of my area.

72. When Bob Jr. became angry at me, he took out his anger in various ways. For instance, he once directed the accountants to give draws from the Nursing Homes that we owned on a 70-30 basis, and *not* from the ones we owned on a 60-40 basis, so that he would receive more in draws and I would receive less. He also restricted the flow of information, telling ROHM employees not to share information with me. As another example, Bob Jr. would call me in for a meeting, and go over all my projects with a fine-tooth comb in an antagonistic and demeaning way (unlike the productive and energetic meetings I had previously had with my father). So, after my father's death, I kept my head down and focused on my clearcut responsibilities and tried to avoid needlessly antagonizing my brother.

73. I always stayed laser-focused, however, on quality of care for the Nursing Home residents, which (in my view) was the most important aspect of ROHM's management services to

the Nursing Homes. At times, when I identified quality-of-care issues, I would voice my opinion, regardless of whether the matter technically fell within the scope of my delineated responsibilities.

74. After my father's passing, Bob Jr. and I had a somewhat heated exchange in my office at ROHM. He repeated yet again his view that ROHM's success was due solely to his own efforts. I became frustrated, and suggested to him that if he was the only one responsible for ROHM's success, he might as well save money by firing all of ROHM's employees including myself. Needless to say, and not surprisingly, he did not accept my suggestion.

75. The success of ROHM was the function of the entire team, our business plan, business relationships and contracts, and numerous other contributions made to grow the business along the way. Indeed, we hosted and funded the "ROHM Christmas Party" every year at the Genesee Valley Club, with lavish food and an open bar, for all the employees and agents of ROHM to celebrate ROHM's business success and to express gratitude for everyone's significant contributions to the company. Bob Jr. authorized the payment of Christmas bonuses every year, and he and I personally handed out the bonus checks and personally thanked each employee at a company-wide meeting. The expenses associated with hosting this expensive annual celebration and issuing bonuses was justified because of the significant value of ROHM's business due to the efforts of all those in attendance.

76. After my father's death, I trusted that the Original Trustees, their attorneys at Harter Secrest LLP, and the family's accountants would police my brother's actions and decisions associated with my father's estate.

77. During my time at ROHM after my father's death, I vaguely recall attending at least one annual meeting for ROHM, facilitated by attorneys at Harter Secrest, and at which Bob Jr. read aloud from a script. As noted above, I do not recall reviewing overall budgets or finances for the

company, and if I did, I would have focused exclusively on the portion of the budget affecting the projects for which I was responsible and about which I had knowledge. My father had trained Bob Jr. to address those types of matters under our division of responsibilities. I trusted that the court-appointed trustees were overseeing all decisions relating to the operation of the businesses owned by the Marital Trust, and that Bob Jr. himself was performing his responsibilities and obligations required by the roles in which he was serving.

78. I was never part of making any decisions with respect to the contracts between ROHM and its customers. Upon information and belief, after my father's death, Bob Jr. was the exclusive decisionmaker with respect to such contracts. Upon information and belief, based upon information I learned only after Bob Jr. sued me in Supreme Court in March 2019, the court-appointed trustees were not involved in reviewing and approving contractual arrangements between ROHM and its customers.

79. Under the terms of RHH's Will, ROHM and other Marital Trust property were required to be operated for the benefit of my mother Barbara (as lifetime income beneficiary) and me (as a residuary beneficiary entitled to receive half of the remaining principal upon my mother's death) (*see* Doc. 92, RHH Will, art. V [D]).

80. I had no understanding of these Will terms at the time or how they applied to ROHM. I trusted that Bob Jr. (as ROHM's President, as an executor of my father's estate, and in his role with respect to the Marital Trust), Mary Ross and Jerald Rotenberg (as the other executors of my father's estate and the appointed trustees of the Marital Trust), and all of the attorneys for the estate and Marital Trust were ensuring that my father's Will was effectuated so that my mother was adequately protected.

**VII. BOB JR. ACQUIRES 100% OF THE NURSING HOMES, WHILE RETAINING 100% CONTROL OF ROHM**

81. Shortly after my father died, my brother told me that he was interested in running the business with his sons, and he implied that I would at some point leave the business altogether. At that time, my nephews were still in college, and I responded that we could wait and see.

82. By 2015, I had become very involved in my mother's day-to-day care and hiring and managing caretakers for her. At or around this time, Bob Jr. approached me again, saying that the boys would soon be finished with college, and that he wanted one or both of the boys to join him in the business. He wanted to have discussions about buying out my interests in the Nursing Homes and transitioning me out of ROHM. I agreed to engage in those discussions because I wanted to spend more time with my mother.

83. In August 2016, my brother and I entered into a Purchase and Sale Agreement, pursuant to which my brother purchased my minority ownership interest in the Nursing Homes. As part of the deal, I agreed to resign from ROHM effective December 31, 2016.

84. This transaction left Bob Jr. as the sole owner of the Nursing Homes. But it also left him in charge of ROHM, a management business that was wholly owned by the Marital Trust.

85. In the wake of my father's death, my mother began distancing herself from Bob Jr. In early 2017, she removed him as her power of attorney and healthcare proxy, and she also removed him as a beneficiary under her will.

86. The year 2016 was a breaking point for what was left of our family in many ways. Prior to 2016, on an annual basis, my mother and I had executed backward-looking releases (entitled "Receipt and Release of Fiduciary and Refunding Agreement"), waiving and releasing any and all claims we might then have had against the executors of my father's estate, including

Bob Jr., Mary E. Ross, and Jerald J. Rotenberg. But 2017 was the last time we signed any such releases—copies of the last releases we signed are attached as **Exhibit A**.

87. After the 2016 transaction with my brother, I expected that he would comply with his fiduciary obligations to my mother and me. Neither I nor, upon information and belief, my mother ever granted him any prospective waivers or releases. Nor upon information and belief did we grant any approvals or acquiesce to any decisions made by Bob Jr. with respect to ROHM.

#### **VIII. LITIGATION AND DISCOVERY OF MY BROTHER'S SELF-DEALING**

88. In March 2019, my brother filed a lawsuit against me, claiming that I had spent too much money taking care of our mother.

89. The first time ROHM was raised in connection with the litigation was in or around March 2020, after we had an opportunity to study copies of checks written from the Marital Trust's bank account. Through these efforts, my attorneys discovered not only that my brother had been paying his attorneys at Pullano & Farrow PLLC out of the Marital Trust, but that he had been arranging for the Marital Trust to pay \$6,000 per month to ROHM.

90. In June 2020, I attended my brother's deposition taken in connection with his claims against me for alleged "overspending," as well as his own role in issuing checks from the Marital Trust bank account. At that deposition, my brother testified that ROHM was "defunct." To say I was shocked by this testimony is an understatement. I could not, and still cannot, believe Bob Jr. destroyed such a significant asset of the Marital Trust.

91. Later, and only as the result of litigation, I discovered that for years, my brother had operated ROHM in such a manner that deprived my mother of Marital Trust income to which she was entitled under my father's Will. I was and remain furious about this because it amounted to stealing from my mother.



92. Additionally, I find the self-dealing absolutely galling because Bob Jr. sued *me* for allegedly overspending on our mother's care (resulting in supposed invasions of principal from the Marital Trust), when it turns out that *he* had been depriving our mother every year of Marital Trust income to which she was entitled. Had he complied with his fiduciary obligations to deal fairly on behalf of the beneficiaries of Marital Trust, ROHM would have generated Marital Trust income, all of which was owed to my mother and could have been used by her for whatever she wanted (including the very care expenses my brother sued me over).

93. Additionally, through litigation, my attorneys and I learned that Bob Jr. had surreptitiously taken over the entirety of ROHM's business under a new entity wholly owned by him.

94. I was not informed of any such transactions or disposition of ROHM's assets and did not consent to any such transactions.

95. Earlier this week, I learned for the first time that ROHM owned the Hurlbut Care Communities trademark between November 2012 and November 2022, that the trademark had been allowed to expire, and that Hurlbut Health Consulting is currently in the process of trying to register for the same trademark. No one ever shared with me any records with me concerning the disposition of this significant intellectual property and associated good will belonging to ROHM. I discovered this information only days ago, after seeing information discovered by my attorneys at the United States Patent and Trademark Office. Despite my beneficial interest in ROHM prior to September 8, 2022, and my status as 50% shareholder beginning on September 8, 2022, no one ever consulted with me about the determination to allow ROHM's trademark registration to expire so that Hurlbut Health Consulting could apply to register the same trademark.

**IX. MY ACQUISITION OF 50% OF ROHM'S SHARES UNDER MY FATHER'S ESTATE PLAN**

96. After discovering Bob Jr.'s self-dealing transactions, beginning in 2020, through counsel, I urged Successor Trustee of the Marital Trust, Tompkins Community Bank, to pursue claims against my brother. At the time, I was pressing for the pursuit of such claims in my capacity as beneficial owner of ROHM's shares due to being a beneficiary of the Marital Trust, ROHM's sole shareholder.

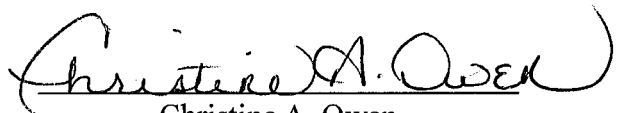
97. My mother Barbara died on August 20, 2020.

98. Upon information and belief, on or about September 8, 2022, Tompkins distributed all of the Marital Trust's shares of ROHM and RHH Mendon to the beneficiaries of the Marital Trust. Accordingly, on September 8, 2022, I received 50% of such shares.

99. Effective as of the same date, Tompkins assigned to me all of the Marital Trust's right, title, and interest in any claims relating to the shares of ROHM it distributed to me, including without limitation direct claims and derivative claims on behalf of ROHM.

100. On December 29, 2022, I commenced this lawsuit.

101. On March 21, 2023, I filed the operative pleading—my Verified Amended Complaint.

  
Christine A. Owen

Sworn to before me this  
20th day of July, 2023



Notary Public

**HEATHER T CLARKE**  
Notary Public, State of New York  
No. 01CL6003866  
Qualified in Monroe County  
Commission Expires March 9, 2026

**CERTIFICATE**

The filing user hereby certifies that the foregoing affirmation complies with the word-count limitations in Rule 202.8-b of the Uniform Rules for the Supreme Court and the County Court (22 NYCRR § 202.8-b) and Rule 17 of the Rules of Practice for the Commercial Division (22 NYCRR § 202.70 [g]) because it contains 6,931 words, excluding the cover page, tables, signature block, and this certification. In making this certification, the filing user relies on the word-count feature of Microsoft Word, which was used to create this document.

Dated: July 20, 2023